

## REMARKS

Claims 1-19 were filed in the original application. Claims 9, 15 and 17 have been withdrawn due to a requirement of restriction; claims 1-8, 10-14, 16, 18 and 19 remain pending.

### Double patenting

Claims 1-4, 6-8, 10, 12-14, 16 and 18 are provisionally rejected as obvious under nonstatutory double patenting over claims 1-4 and 6-8 of co-pending Application No. 10/304,211.

Claims 1-4, 6-8, 10, 12-14, 16 and 18 are provisionally rejected as obvious under nonstatutory double patenting over claims 1-4 and 6-8 of co-pending Application No. 10/304,212. Applicant notes that Application No. 10/304,212 stands abandoned.

Claims 1-4, 6-8, 10, 12-14, 16 and 18 are provisionally rejected as obvious under nonstatutory double patenting over claims 1-4 and 6-8 of U.S. Publication No. 2002/0066712. Applicant notes that U.S. Publication No. 2002/0066712 corresponds to Application No. 08/967,410, which has issued as U.S. Patent No. 6,715,624.

Claims 6-8 are rejected as obvious under nonstatutory double patenting over claims 1-3 of U.S. Patent No. 6,715,624. A terminal disclaimer is submitted herewith to obviate the non-provisional rejection in view of U.S. Patent No. 6,715,624.

For the reasons described above, Applicant respectfully requests reconsideration of the rejections in view of Application No. 10/304212 (now abandoned,) Publication No. 2002/0066712 (now issued as U.S. Patent No. 6,715,624) and U.S. Patent No. 6,715,624.

### U.S. Patent No. 5,932,482 to Markelov

Applicant respectfully notes that U.S. Patent No. 5,932,482 to Markelov ("Markelov") does not qualify as prior art under 35 U.S.C. §102 via §103(a) because Markelov has a filing date (August 10, 1998) that falls after the effective filing date under 35 U.S.C. §121 of the present application, i.e., November 12, 1997.

### Rejection of Claims 6-8 and 11 Under 35 U.S.C. § 103(a)

Claims 6-8 and 11 are rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,620,434 to Brony ("Brony") in view of U.S. Patent No. 5,932,482 to Markelov ("Markelov"). As described above, Markelov is unavailable as a prior art reference for the present application.

The Examiner indicates that Brony does not teach a tapered first seal surface for engaging a tapered socket on an associated vial, as recited by independent claim 6. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) of claim 6 and its dependent claims 7, 8 and 11.

Rejection of Claim 10 Under 35 U.S.C. § 103(a)

Claim 10, which depends from independent claim 6, is rejected under 35 U.S.C. § 103(a) over Brony in view of Markelov, and further in view of U.S. Patent No. 4,080,965 to Phillips ("Phillips"). As described above, Markelov is unavailable as a prior art reference for the present application. Brony alone does not teach or suggest all of the features recited by claim 10 for the same reasons described above for claim 6. Moreover, Brony, in combination with Phillips, does not teach or suggest the invention as recited by dependent claim 10 because Phillips does not remedy the deficiencies of Brony. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) of claim 10.

Rejection of Claim 1-5 Under 35 U.S.C. § 103(a)

Claims 1-5 are rejected under 35 U.S.C. § 103(a) over Brony in view of Phillips. For the following reasons, Applicant respectfully submits that Brony and Phillips, each alone or in combination, do not teach or suggest all of the features recited by independent claim 1.

Brony does not teach or suggest a vial closure device for a vial containing a gas or vapor to be extracted by a gas sampling device, as recited by claim 1. Rather, Brony is directed primarily to a "link for use between a needleless syringe and a liquid medicine vial." See Brony, Abstract. The syringe is filled while the vial is held in an inverted position to permit liquid to be drawn from the vial into the syringe. See Brony, col. 7/lines 8-11. As indicated in the Office action, Brony does not teach at least one O-ring in a groove of a tubular body interior wall, as recited by independent claim 1.

Rather, Brony teaches a conical nozzle tip (22) of a syringe and a resilient bore (14, 54); the conical tip (22) forms a seal when forced into the resilient bore (14, 54). See Brony, col. 5/lines 17-21 (stating that "[t]he material is preferably flexible so as to expand as conical nozzle tip 22 is forced into the bore"); see also col. 7/lines 5-6.

Philips alone does not teach or suggest all of the features recited by claim 1. For the following reasons, although Philips discloses an O-ring, there is no suggestion in either Philips or Brony to combine the Philips O-ring with the Brony link (18, 58) in the manner suggested by

the Office action. Brony discloses a flexible bore that forms a seal with a conical nozzle of a syringe. Apparently, the Philips O-ring would interfere with the functioning of the flexible bore because the bore is intended to contact the conical surface of the nozzle and flex to provide a seal. Moreover, it apparently would be unconventional and difficult to form a groove in Brony's flexible bore and seat the Philips O-ring in the asserted groove. Further, the disclosed shapes of the Brony resilient bore and conical nozzle (see Figures 7 and 8) do not appear to lend themselves to use of the Philips O-ring. For the above reasons, the Philips O-ring would at best be redundant in combination with the Brony flexible bore; more likely, the asserted combination would render the Brony flexible bore non-functional. Thus, Brony appears to teach away from the asserted combination.

Further, neither Brony or Philips teach or suggest a valve that prevents a gas sampling device from being inserted into a vial, as recited by claim 1. In contrast, Brony apparently suggests that the bore (14, 54), and not the valve (72), limits the insertion of the syringe's conical nozzle. See, e.g., Brony Figures 7 and 8.

For all the above reasons, Applicant respectfully submits that claim 1 is not obvious in view of Brony and Phillips. Accordingly, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) of independent claim 1 and its dependent claims 2-5.

Rejection of Claim 12-14 and 16 Under 35 U.S.C. § 103(a)

Claims 12-14 and 16 are rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,046,645 to Hagan ("Hagan") in view of Phillips. For the following reasons, Applicant respectfully submits that Hagan and Phillips, each alone or in combination, do not teach or suggest all of the features of independent claim 12.

Hagan is directed to a valve insert (20) for a plastic seltzer bottle (10). See Hagen col. 3/lines 33-48. Hagan alone does not teach or suggest all of the features recited by claim 12; for example, Hagan does not teach or suggest a second seal including an O-ring or septum for making a substantially gas tight seal between a gas sampling device and a body member, and does not teach or suggest a valve that prevents a gas sampling device from being inserted into a first aperture.

Phillips alone does not teach or suggest all of the features recited by claim 12. Moreover, Hagan and Phillips in combination do not teach or suggest all of the features recited by claim 12. Not only does Hagan teach no second seal, a second seal would serve no purpose for the seltzer package (10) insert (20) taught by Hagen. The insert (10) is not

configured to admit a gas extraction device. More generally, the Hagen insert (10) is not intended or designed to provide a gaseous seal with any device when the valve insert (10) is opened to dispense the seltzer in the bottle (10); thus, there is no suggestion in Hagan or Philips to add the Philips O-ring to the Hagen insert because the O-ring would serve no purpose in the Hagen insert (20). Indeed, the Philips O-ring could interfere with the operation of the insert (20).

For the above reasons, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) of independent claim 12 and its dependent claims 13, 14 and 16.

Rejection of Claim 18 and 19 Under 35 U.S.C. § 103(a)

Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) over Hagan, Phillips, and Markelov. As described above, Markelov is unavailable as a prior art reference for the present application. For the reasons described above for claim 12, Hagan and Phillips, alone or in combination, do not teach or suggest all of the features of either claim 18 or 19, which both depend from claim 12. Accordingly, Applicant requests reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a) of claims 18 and 19.

Conclusion

In view of the remarks presented herein, Applicant respectfully requests that the rejection of claims 1-8, 10-14, 16, 18 and 19 be reconsidered and withdrawn, with claims 1-8, 10-14, 16, 18 and 19 proceeding to allowance. The Examiner is invited to call the undersigned, if the Examiner believes that a telephone conversation could be helpful in expediting prosecution of the instant application.

Respectfully submitted,

Date: August 28, 2006

Tel. No.: (508) 482-3869  
Fax No.: (508) 248-2320

/Jamie H. Rose/  
Jamie H. Rose - Reg. No. 45,054  
Attorney for Applicant